ATTACHMENT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration	WC Docket No. 07-149
Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration, and to End the NAPM LLC's Interim Role in Number Portability Administration Contract Management	WC Docket No. 09-109
Telephone Number Portability	CC Docket No. 95-116
Telephone Number Portability	

REPLY IN SUPPORT OF APPLICATION OF NEUSTAR, INC., FOR REVIEW OF SECOND PROTECTIVE ORDER [CORRECTED]

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Neustar seeks the Commission's review of the Wireline Competition Bureau's *Second Protective Order* because it (1) invites Ericsson's wholly owned subsidiary, Telcordia Technologies, Inc. d/b/a iconectiv ("Ericsson") and the NAPM, LLC, to submit as "confidential" or "highly confidential" documents that are not commercially sensitive and that the public has a right to see; (2) precludes access by Neustar to confidential portions of the proposed Master Services Agreement ("MSA"), even though the MSA assumes performance by Neustar of specific transition obligations on a defined timeline; and (3) effectively prevents most interested parties – and the most knowledgeable party, Neustar – from reviewing the proposed MSA *before* they are bound. Both the NAPM and Ericsson oppose Neustar's application for review ("AFR"), but their procedural and substantive arguments are without merit.

First, the claim that the AFR is procedurally barred because the Bureau was not given an opportunity to pass on the questions raised in the AFR is incorrect. Because the Bureau was informed of the substance of the arguments raised in the AFR, "the public interest benefits inherent in the orderly and fair administration of the Commission's business" are preserved.[1] Representatives of small carriers and public interest groups have, for months, raised the need for greater openness and public access to the MSA documents.[2] In making those arguments, they have emphasized the very arguments that provide the basis for Neustar's AFR – that all interested parties "have an equal interest in reviewing the Proposed Contract in a timely manner, including adequate opportunity to provide input."[3] Neustar itself argued that the Commission

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[1] *WSTE-TV, Inc. v. FCC*, 566 F.2d 333, 336 (D.C. Cir. 1977) (internal quotation marks omitted).

[2] See, for example, letters filed in these dockets by the LNP Alliance, NTCA, FISPA, Public Knowledge, Common Cause, Open Technology Institute at New America, and others on Dec. 10, 2015, Jan. 14, 2016, Mar. 2, 2016, and Mar. 31, 2016.

[3] Dec. 10 LNP Alliance Letter at 2.

should "seek public comment on the NAPM-Ericsson contract to obtain the views of the parties most affected by its terms and to identify any requirements or obligations in the contract that require further examination."[4]

The *Second Protective Order* rejected those arguments, by authorizing Ericsson and the NAPM to submit MSA documents under seal. Furthermore, the question of what action to take on the proposed MSA is before the Commission now. Commission consideration of the issues raised in the AFR is a necessary predicate to resolution of the ultimate issues in this proceeding.

Second, by releasing, without explanation, a new version of the proposed MSA with substantial portions unredacted, Ericsson and the NAPM have conceded that hundreds of pages of the MSA and hundreds of pages of publicly available attachments were improperly designated as Confidential or Highly Confidential, even under the standards adopted in the *Second Protective Order*. Far from resolving the concerns raised by the AFR, the recent filings emphasize the need for the Commission to reconsider the broad confidentiality restrictions authorized by the Bureau. The filing of the redacted MSA does not moot the AFR; critical aspects of the MSA remain under seal, including provisions related to transition and financial aspects of the proposed agreement. Most industry participants will be unable to review the very provisions that are likely to have the greatest impact on their businesses.[5] Although the *Second Protective Order* allows parties to challenge specific confidentiality designations, the process is cumbersome, and there is no assurance that any challenge will be resolved in a timely manner.

Third, Ericsson provides no adequate response to the showing that the *Second Protective*

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[4] Letter from Michele Farquhar, Counsel to Neustar, Inc., to Marlene H. Dortch, Sec'y, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149, 09-109 (Mar. 10, 2016).

[5] *See* Letter from West Telecom Services, LLC, to Marlene H. Dortch, CC Docket No. 95-116, WC Docket Nos. 07-149, 09-109 (May 4, 2016), at 1 ("[T]he public, redacted version of the MSA . . . conceals almost all of the substance necessary to conduct a meaningful review.").

Order sharply restricts access by knowledgeable industry personnel. The claim that the *Second Protective Order* was intended to permit technical and managerial personnel to gain access to the proposed MSA cannot be squared with the plain terms of the Bureau's order. Accordingly, the need for the Commission to grant review is manifest. There is no dispute that the *only* employees of industry participants that may view the Confidential portions of the MSA are in-house counsel not involved in competitive decision-making; no employees at all may view Highly Confidential information. That means that technical and managerial employees – those best able to evaluate the terms of the proposed MSA – are barred from reviewing *any* information that the NAPM and Ericsson would prefer to keep under wraps. Ericsson (at 7) seeks to brush that concern aside by arguing that the MSA is primarily a "legal" document. This is nonsense: as the NAPM itself has recently argued to the Commission, the MSA includes "provisions regarding data security and privacy" and incorporates "the lessons learned by the NAPM LLC over the decades since local number portability was first deployed."[6]

Moreover, Ericsson is wrong to suggest that most in-house counsel will be permitted to view the confidential documents, in light of the broad definition of "Competitive Decision-Making" and the nature of business relationships in the industry. Indeed, Ericsson's argument – that merely taking service under standard terms does not constitute competitive decision-making – illustrates why the entire approach underlying the *Second Protective Order* is misguided. As Ericsson concedes, *every* carrier, not just the members of the NAPM, will be bound by the terms of the MSA. All carriers thus should be entitled to review and comment on the proposed MSA.

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[6] Letter from NAPM to Marlene H. Dortch, Sec'y, FCC, CC Docket 95-116, WC Docket Nos. 07-149, 09-109, at 1 (May 2, 2016).

Fourth, Ericsson and the NAPM provide no sound reason to deprive Neustar of access to the proposed MSA (other than to the extent necessary to protect bona fide trade secrets). On the contrary, it is crucial for Neustar to be able to offer informed comment on the proposed documents to avoid potential transition pitfalls. Review of the MSA by knowledgeable Neustar personnel has revealed that the current version of the MSA requires Ericsson to transition Enhanced Law Enforcement Platform ("ELEP") services only *after* all NPAC regions have been successfully transitioned – which Neustar has already said it will not be able to support. There may be other gaps that the remaining redactions conceal. Notably, though Ericsson claims that review of the proposed MSA would give Neustar an advantage in negotiations with the NAPM, the NAPM makes no such argument, and it is groundless. NAPM's argument (at 2-3) that secrecy is required to preserve the integrity of any potential re-bid is incorrect because nothing in the proposed MSA is likely to provide Neustar with any competitive intelligence relevant to any eventual re-bid. And the pervasive claim that Neustar seeks delay has no basis: Neustar has been fully cooperative in transition efforts. The extraordinary delays in negotiations and presentation for approval of the proposed MSA have nothing to do with Neustar.

Fifth, Ericsson and the NAPM offer no response to the showing that the process that the *Second Protective Order* creates is inconsistent with the fundamental impartiality requirement of 47 U.S.C. § 251(e). By denying the vast majority of industry participants the opportunity to comment meaningfully on the important aspects of the proposed MSA, the Bureau's order risks favoring the interests of a few providers. That result would be contrary to the express command of 47 U.S.C. § 251(e); indeed, broad industry access is needed to guard against it.

Both the NAPM and Ericsson devote more energy to mud-slinging that to legal argument, accusing Neustar of seeking to delay the transition. The NAPM goes so far as to claim (at 6) that

"Neustar is now throwing every regulatory roadblock it can to prevent a smooth transition." That is simply not the case. To the contrary, Neustar has been fully cooperative in every effort by the NAPM and the Transition Oversight Manager ("TOM") to work towards transition. The NAPM complains that public review of the proposed MSA will cause delay, but it took the NAPM nearly seven months to negotiate a contract with Ericsson. And it took another five months before the MSA was submitted for approval. Additionally, the NAPM and Ericsson wasted another month by improperly submitting the MSA under seal. The NAPM and Ericsson cannot point any fingers at Neustar for these delays, nor can Ericsson blame Neustar for its own violations of the terms of the *Selection Order* – which has undoubtedly entailed additional delays.[7] Having dithered for a year, Ericsson and the NAPM now want to deprive the rest of the industry of the opportunity to review and comment on the MSA before they are bound by it and seek to make the Commission complicit in their effort. The *Second Protective Order* would facilitate that improper plan. The Commission should not allow it.

CONCLUSION

For the reasons set forth above, the Commission should grant the application for review.

Respectfully submitted,

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[7] *See, e.g.*, Ellen Nakashima, *Security of Critical Phone Database Called into Question*, Wash. Post (Apr. 28, 2016), *available at* http://wpo.st/WH2Y1.